Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Telecommunications Relay Services and	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals	)	
with Hearing and Speech Disabilities	)	
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170
	)	
ITTA Petition for Declaratory Ruling	)	
Regarding TRS Line Item Descriptions	)	

COMMENTS OF AT&T

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COMMENTS OF AT&T

AT&T Services, Inc. ("AT&T") files these comments on the Petition filed by ITTA seeking a declaratory ruling that carriers may recover from customers their contributions to the Telecommunications Relay Services ("TRS") fund.[1]

I. INTRODUCTION AND SUMMARY

The Federal Communications Commission ("Commission") should declare that nothing in its rules or orders precludes a carrier from recovering from customers the carrier's TRS fund contributions through a line item on customers' invoices. The Commission's orders referring to "a specifically identified charge on subscribers' lines" are best read as prohibiting carriers from imposing the costs of TRS on a limited subset of their customers buying interstate services. At a minimum, as ITTA explains, those orders should not be read to prohibit a carrier from including TRS amounts in a composite line item that recovers multiple regulatory costs. Such composite

[1] Petition for Declaratory Ruling of ITTA, CG Docket Nos. 03-123, 98-170 (filed May 8, 2018) ("ITTA Petition").

line items are in widespread use throughout the industry and are consistent with the Commission's guidance to customers about how to understand their bills.

The Commission's initial orders implementing Title IV of the Americans with Disabilities Act ("ADA") are properly read not to have enacted a prohibition on carriers recovering their TRS fund contributions through line items on customers' bills. In those proceedings — consistent with Congress's directive in 47 U.S.C. § 225 — the Commission was focused on ensuring that the costs of TRS would be borne by *all* subscribers to interstate services, as opposed to a subset of those subscribers, such as TRS users. Nonetheless, some have read those orders to mandate that carriers recover TRS costs exclusively by raising their base rates billed to customers. The Commission should correct this confusion and declare that carriers can indeed recover TRS costs from consumers through line-item charges.[2]

At a minimum, the Commission should confirm that its rules and orders do not prohibit the use of a composite line item, where TRS is one of several recovered regulatory fees. Such composite line items are consistent with the statutory directive to spread the costs of TRS across all consumers of interstate services and address any conceivable concern the Commission could have had with a stand-alone TRS line item on customers' bills, such as their potential to be discriminatory or misleading. Moreover, as ITTA explains, the use of a composite line item to recover TRS costs among other regulatory fees is widespread industry practice and consistent with the Commission's own guidance. Nor is there any indication that, in implementing § 225, the Commission sought to infringe on carriers' free speech rights by prohibiting them from disclosing

[2] Such charges would also, of course, have to comply with any other applicable Commission rules, including its Truth-in-Billing rules.

to their customers truthful information about the government mandated costs that those carriers seek to recover.

II. DISCUSSION

A. The Commission Should Confirm That Carriers May Recover TRS Fund Contributions Through TRS Line-Item Charges.

Title IV of the ADA requires the Commission to ensure "users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services."[3] In furtherance of that goal, the ADA specifies that the Commission's regulations "shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from *all subscribers for every interstate service*."[4] The statute thus identifies from *whom* TRS costs shall be recovered. Nothing in the statute addresses *how* carriers may recover those costs from their customers.

In its first two orders implementing § 225, the Commission stated that, "in order to provide universal telephone service to TRS users *as mandated by the ADA*, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on subscribers' lines."[5] In light of the statutory directive, that sentence is best read as stating only that carriers cannot recover the costs of interstate TRS through charges imposed on a limited subset of their consumers, rather than "all subscribers for every interstate

[3] 47 U.S.C. § 225(d)(1)(D).

[4] *Id.* § 225(d)(3)(B) (emphasis added).

[5] Report and Order and Request for Comments, *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, 6 FCC Rcd 4657, ¶ 34 (1991) ("*TRS I Order*") (emphasis added); Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, 8 FCC Rcd 1802, ¶ 22 (1993) ("*TRS II Order*") (replacing the word "subscribers'" with "end user's").

service" as the statute mandates. That sentence should not be read as enacting — without any discussion, stated rationale, or statutory basis — a broad prohibition against using line items to recover those costs and a mandate that carriers recover the cost of interstate TRS exclusively through the base rates for their interstate communications services. This is clear from the history leading up to that decision.

In 1989, the Commission sought comment on several mechanisms for financing an interstate TDD network.[6] Shortly afterwards, Congress enacted the ADA, and the Commission initiated a new Notice of Proposed Rulemaking, seeking comment on the proposed cost recovery mechanisms in light of the ADA's new requirement for "interstate relay services [to] be supported by subscribers to *all* interstate services."[7] Two primary proposals emerged in the comment period: (1) a charge on all providers of interstate telecommunications on the basis of their interstate revenues; or (2) a charge on subscribers' lines "similar to the subscriber line charges assessed on subscribers to local telephone service under Part 69 of the Commission's rules."[8]

In advancing the second approach, AT&T and MCI proposed that interstate TRS costs be "recovered through an assessment on all subscriber lines provided by local exchange carriers and cellular carriers."[9] This approach, the companies proposed, would be "administratively

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[6] *See* Order Completing Inquiry and Providing Further Notice of Proposed Rulemaking, *Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons*, 4 FCC Rcd 6214, ¶ 4 (1989).

[7] Notice of Proposed Rulemaking, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, 5 FCC Rcd 7187, ¶ 21 (1990) (emphasis added).

[8] Third Report and Order, *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, 8 FCC Rcd 16, ¶ 12 (1993) ("*TRS III Order*").

[9] MCI Comments at 2, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571 (filed Jan. 15, 1991) ("MCI Comments"); AT&T Reply Comments at 5, *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act*

feasible,"[10] and the most effective mechanism for securing the "admittedly necessary funding for interstate relay services."[11] As the Commission later explained, the problem it found with this SLC-like approach was that it would not "capture all subscribers to every interstate service" as § 225 requires.[12] Other commentators, such as the National Center for Law and the Deaf ("NCLD") had made just this argument in response to those proposals: "[B]ecause end user access charges do not apply to special access lines, this recovery mechanism would not fulfill Title IV's requirement that all subscribers for every interstate service contribute to the funding of relay services."[13]

Thus, when the Commission in both the *TRS I Order* and the *TRS II Order* remarked that "carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on subscribers' lines,"[14] it was merely holding that relying on a SLC-like charge was not consistent with the ADA, and that carriers would have to recover costs from *all* subscribers of their interstate services.[15] This interpretation is confirmed

of 1990, CC Docket No. 90-571 (filed Feb. 15, 1991) ("AT&T Reply Comments") (agreeing with MCI's proposal to assess a charge on each subscriber line).

[10] MCI Comments at 2.

[11] AT&T Reply Comments at 6.

[12] *TRS III Order* ¶ 12.

[13] Reply Comments of NCLD at 15-16, *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571 (filed Feb. 14, 1991) (emphasis in original) (citing AT&T and MCI as proponents of the SLC-like charge).

[14] *TRS I Order* ¶ 34; *TRS II Order* ¶ 22 (replacing the word "subscribers'" with "end user's").

[15] *See also TRS III Order* ¶ 12 n.18 ("The common carriers, of course, would in turn recover these costs from their subscribers.").

by the very next sentence in the *TRS I Order*: "[T]he record is not adequate to determine a specific cost recovery mechanism at this time."[16]

In more recent orders, the Commission has paraphrased its "specifically identified charge" statement from the *TRS I Order* and the *TRS II Order* in a way that some have claimed means that the Commission has prohibited all use of line items referring to TRS on customers' bills. For example, in its *Second Truth-in-Billing Order*, the Commission accompanied its observation that line items are not prohibited *per se* under existing Truth-in-Billing rules with a footnote in which it stated: "We note that this finding does not alter the role of any other specific prohibition or restriction on the use of line items. For example, this Commission has prohibited line items for interstate Telephone Relay Service (TRS) costs."[17] And in its *TRS 2004 Order*, the Commission similarly remarked in a footnote that it "reiterate[d] that carriers obligated to contribute to the Interstate TRS Fund (*e.g.*, carriers providing interstate telecommunications services) may not specifically identify a charge on their consumers' bill as one for relay services."[18] In each case, the statement was followed by a citation to the *TRS I Order* or the *TRS II Order* without any suggestion that the Commission was expanding or altering the rule adopted in those initial orders, which, as explained above, did *not* ban TRS line items.

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[16] *TRS I Order* ¶ 34.

[17] Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, T*ruth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, 20 FCC Rcd 6488, ¶ 23 n.64 (2005) ("*Second Truth-in-Billing Order*"), *rev'd on other grounds sub nom. NASUCA v. FCC*, 457 F.3d 1238 (11th Cir. 2006).

[18] Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 19 FCC 12475, ¶ 8 n.33 (2004) ("*TRS 2004 Order*").

And, the Commission's most recent statements on the subject confirm that the best reading of the Commission's orders is that, consistent with § 225, carriers can recover interstate TRS costs through a "surcharge" or "line item." In its *VRS 2011 Order*,[19] the Commission explained that the costs of Video Relay Service ("VRS"), a form of TRS subject to § 225, "are passed on to all consumers of telecommunications service by intrastate and interstate common carriers, *either as a surcharge* on their monthly service bills *or* as part of the rate base for the state's intrastate telephone services."[20] This explicit statement puts the issue to rest.

B. At a Minimum, the Commission Should Confirm That Carriers May Recover TRS Fund Contributions Through Composite Line-Item Charges that Include TRS Among Other Regulatory Fees.

Even if the Commission were to read its prior orders to prohibit carriers from recovering interstate TRS costs through a stand-alone TRS line item, the Commission should confirm that those orders do not prohibit carriers from recovering those costs with other regulatory fees using a composite line item surcharge.[21]

A composite line-item surcharge does not contravene Commission orders. A composite line item that recovers various expenses based on government mandates, including for TRS costs, is not a "specifically identified charge [for TRS] on subscribers' lines" prohibited by the Commission.[22] And so long as those various expenses included within the composite line item are clearly explained to customers in accordance with applicable Truth-in-Billing rules, these composite charges do not violate any statute or Commission rule. In fact, these composite line

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[19] Further Notice of Proposed Rulemaking, *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 26 FCC Rcd 17367 (2011) ("*VRS 2011 Order*").

[20] *Id.* ¶ 103 n.209 (emphases added).

[21] Those line items, of course, must comply with the FCC's Truth-in-Billing rules.

[22] *See, e.g., TRS I Order* ¶ 34.

items can comply with the mandate in § 225(d)(3)(B) and Commission regulation that TRS costs be spread across "all subscribers for every interstate service."[23] The *TRS I Order* and *TRS II Order* cannot be read to go so far as to mandate that carriers recover interstate TRS costs only from the base rates for their interstate communications services.

A composite line-item surcharge accurately and properly describes the fee. The use of composite line items also fully addresses any concern the Commission may have had regarding stand-alone TRS line items when it adopted the *TRS I Order* and the *TRS II Order*. In the years leading up to the ADA's enactment, the costs of several intrastate relay systems were recovered through specific line items that used terminology that stigmatized persons with hearing loss. For example, California's relay service was funded by a surcharge that appeared on telephone bills as "Deaf Trust Fund."[24] These types of line items had two problems: (1) they were objectively offensive; and (2) they prominently demarcated TRS as a "special" service, rather than one that benefited *all* society.[25] Accordingly, advocates for persons with hearing loss lobbied strongly against such "red flag" labels prior to the enactment of the ADA.[26] Congress took notice and "recognize[d] that the relay services are of benefit to all society and therefore would expect that any [State program's] funding mechanism not be labeled so as to prejudice or offend the public."[27]

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[23] 47 C.F.R. § 64.604(c)(5)(ii).

[24] H.R. Rep. No. 101-485, at 68 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 512, 557, Title IV Telecommunications, Regulations.

[25] Karen Peltz Strauss, *A New Civil Right*; *Telecommunications Equality for Deaf and Hard of Hearing* 102 (2006).

[26] *Id.* at 108.

[27] H.R. Rep. No. 101-485, at 68, *as reprinted in* 1990 U.S.C.C.A.N. at 557. NCLD applauded the FCC's proposed requirement that certified states not be allowed to label funding mechanisms in a manner that offends the public, and rather than suggesting that line items be prohibited all together, proposed that the requirement "that these labels not be offensive should not only be imposed on the states, but on the common carriers as well." NCLD Comments at 42, *Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the*

Composite line items — with names like "Federal Regulatory Fee" or "Carrier Cost Recovery Charge" — are accurate and non-offensive, while reflecting the public benefit the TRS program provides and avoiding any potential confusion that TRS is a specific service that only certain customers purchase.

A composite line-item surcharge is consistent with widespread industry practice and Commission guidance. Composite line items that recover interstate TRS costs, as well as other regulatory fees, are broadly used by carriers today.[28] For example, AT&T interstate business service customers pay a composite fee called a "Federal Regulatory Fee," which AT&T explains is a monthly charge that includes TRS, local number portability, and other regulatory costs.[29] Numerous other carriers use similar composite line items with names like "Carrier Cost Recovery Charge,"[30] "Federal Regulatory Recovery Fee,"[31] and "Regulatory Recovery Fee."[32] Moreover, the Commission's own guide to "Understanding Typical Charges on Phone Bills" notes that "some

Americans with Disabilities Act of 1990, CC Docket No. 90-571 (filed Jan. 15, 1991) (emphasis omitted).

[28] *See* ITTA Petition at 3.

[29] *E.g.*, AT&T Business Service Guide: General Provisions & Glossary *GP-4.1.5. Federal Regulatory Fee* (last updated July 17, 2017), *available at* http://serviceguidenew.att.com.

[30] Verizon Enterprise Service Guide (describing the "Carrier Cost Recovery Charge" as one to recover, among other things, the costs of "telecommunications services for the speech and hearing-impaired"), *available at* http://www.verizonenterprise.com/external/service_guide/reg/m_ccrc.htm.

[31] CenturyLink Bill Explanation (describing the "Federal Regulatory Recovery Fee," which is now combined with its "Property Tax Allocation" as "Carrier Prop Tax/Reg Fees," as one that recovers "money paid to the federal government for . . . telecommunication services for the hearing-impaired"), *available at* https://www.centurylink.com/home/help/account/billing/taxes-fees-and-surcharges-on-your-bill/federal-regulatory-recovery-fee-explained.html.

[32] Sprint Wireline Additional Business Charges, Fees, Surcharges, and Taxes (eff. July 1, 2016) (describing the "Regulatory Recovery Fee" as one to "recover amounts paid by Sprint to the federal government . . . for telecommunications services for the hearing-impaired"), *available at* https://www.sprint.com/business/resources/ratesandterms/taxesandsurcharges.pdf.

of the charges you may see on both your wireline and wireless telephone bills" include "TRS charges" to "help pay for relay services that transmit and translate calls for people with hearing or speech disabilities."[33]

Avoid constitutional concerns. The Commission should avoid reading its previous orders in a manner that would raise serious constitutional concerns. Interpreting Commission orders in a manner which prohibits an explanation that a composite line item surcharge includes interstate TRS costs would violate carriers' First Amendment rights. Courts have not hesitated to strike down regulations that prohibit companies from disclosing truthful information about government mandated costs in a line item on customer invoices. For example, in *BellSouth Telecommunications, Inc. v. Farris*,[34] the Sixth Circuit held that a Kentucky statute that prohibited telecommunications companies from separately stating on bills to customers a new gross revenue tax violated the companies' First Amendment rights. In striking down the statute, the court began by observing that "truthfully telling customers why a company has raised prices simply by listing a new tax on a bill, it seems to us, is not the kind of false, inherently misleading speech that the First Amendment does not protect."[35] The court went on to explain that the legislature had done little to explain the prohibition, and that its failure to not first rely on "federal regulations [that are] already on the books" such as the Truth-in-Billing rules to achieve its purpose, weighed substantially against a finding that the prohibition had a "reasonable fit" to the government's interest in restricting the speech.[36]

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[33] FCC, *Understanding Your Telephone Bill: Understanding Typical Charges on Phone Bills* (last updated June 7, 2018), *available at* https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill#typical-charges.

[34] 542 F.3d 499 (6th Cir. 2008).

[35] *Id.* at 506.

[36] *Id.* at 508.

In the instant case, § 225 imposes a government mandated cost on telecommunications companies, which some companies recover using a surcharge and explain using truthful information in their bills. Similar to the Sixth Circuit case, no Commission order offers any justification of the government's interest in banning these practices or any explanation why the Truth-in-Billing rules do not adequately serve any such government interest. As the Supreme Court observed last year, "it is important to avoid the premature adjudication of constitutional questions," and a plausible interpretation of a statute, rule, or order that avoids such constitutional questions is to be preferred.[37] Here, the ADA and the Commission's rules and orders can all be read to allow the recovery of interstate TRS costs through composite line items, if not also through stand-alone line items, and the disclosure of the reasons for that recovery. The Commission should reject any reading of the Commission's prior orders that would raise the serious constitutional concerns that would come with a ban on these actions.

III. CONCLUSION

For these reasons, the Commission should issue a declaratory ruling clarifying that carriers may indeed recover costs of TRS through line items.

[37] *Matal v. Tam*, 137 S. Ct. 1744, 1755 (2017) (alterations in original omitted); *see also Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) ("It is a cardinal principle" of statutory interpretation, however, that when an act of Congress raises "a serious doubt" as to its constitutionality, "this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.").

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